Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of BellSouth's Petition for Declaratory Ruling Regarding the Commission's Definition of Interconnected VoIP in 47 C.F.R. § 9.3 and the Prohibition on State Imposition of 911 Charges on VoIP Customers in 47 U.S.C. § 615a-1(f)(1)	WC Docket No. 19-___

BELLSOUTH TELECOMMUNICATIONS, LLC'S PETITION FOR DECLARATORY RULING

Scott H. Angstreich
Jeremy S. B. Newman
Kellogg, Hansen, Todd, Figel
& Frederick, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Christopher Heimann
Gary L. Phillips
David L. Lawson
AT&T Services, Inc.
1120 20th Street, N.W.
Washington, D.C. 20036
(202) 457-3058

Attorneys for BellSouth Telecommunications, LLC

January 7, 2019

TABLE OF CONTENTS

Page

INTRODUCTION AND SUMMARY

Voice over Internet Protocol means just what it sounds like: voice communications transmitted *using* Internet Protocol ("IP") technology. The Commission has repeatedly recognized that the core distinction between traditional telephone service and VoIP is that traditional telephone service transmits voice communications over the circuit-switched network, while VoIP instead uses IP technology and packet switching. Yet in numerous lawsuits filed in multiple jurisdictions — *seven* of which are currently stayed under the primary jurisdiction doctrine[1] — plaintiffs have argued that voice services that are *not* transmitted to the end-user customer using IP technology can nonetheless qualify as interconnected VoIP under the definition in 47 C.F.R. § 9.3. Nearly all of these lawsuits trace to a single individual, Roger Schneider, who (through companies he owns) is either a *qui tam* plaintiff or a contingency-fee consultant to the local government plaintiff. And Schneider hopes to collect for himself — and his investors — as much as 40 percent of the additional 911 charges that would be due from customers if his theories were accepted.

---

[1] The first case to be stayed under the primary jurisdiction doctrine was the Alabama Action, *Autauga Cty. Emergency Mgmt. Commc'n Dist. v. BellSouth Telecomms., LLC*, No. 2:15-cv-00765-SGC (N.D. Ala. Mar. 2, 2018). The next five cases to be stayed were the Florida Actions, which are five nearly identical cases, one filed against BellSouth and two other AT&T companies (AT&T Corp. and Teleport Communications America, LLC), and four others filed against affiliates of Verizon, Frontier, CenturyLink, Level 3, and Windstream. *See State ex rel. Phone Recovery Servs., LLC v. Verizon Bus. Glob.*, Nos. 2016-CA-000062 *et al.* (Fla. Cir. Ct. Leon Cty. May 17, 2018). The last case to be stayed was the Pennsylvania Action, in which AT&T Corp. and Teleport are among the 26 telephone company defendants. *See Phone Recovery Servs., LLC v. Verizon Pa., Inc.*, No. GD-14-021671 (Pa. Ct. Comm. Pl. Allegheny Cty. Aug. 9, 2018). Counsel for Phone Recovery Services — the *qui tam* relator in the Florida and Pennsylvania Actions — participated in the discussions with Commission staff to structure this declaratory ruling proceeding. And counsel for BellSouth in the Alabama Action is also counsel for AT&T in the Florida and Pennsylvania Actions and consulted with counsel for other defendants in those actions while those discussions were ongoing.

To resolve these disputes, the Commission should declare that the transmission of voice traffic in IP format over the last-mile connection to the end-user customer is necessary, although not sufficient, for a voice service to qualify as either interconnected or non-interconnected VoIP. The Commission should also declare that, when a customer orders a non-IP-enabled voice service (such as an ISDN PRI), that service continues *not* to be either interconnected or non-interconnected VoIP, even if the voice provider elects to transmit that service over the last-mile connection to the end user in IP before converting it to the protocol (such as TDM) of the ordered service. The Commission long ago held that a provider's internal decisions regarding service provisioning do not control the classification of the service the end user orders and receives. And, finally, the Commission should declare that, in classifying a service as VoIP or non-VoIP, there is no need to consider the demarcation point specific to the customer ordering the service. The Commission's demarcation point rules were created for very different purposes and have never been part of the interconnected VoIP definition. There is no reason for the demarcation point rules to cause the same service, provisioned in the same way, to be classified differently merely because the customers purchasing that service occupy buildings with different demarcation points.

The Commission should also declare that 47 U.S.C. § 615a-1(f)(1) prohibits state and local governments from requiring interconnected VoIP customers to pay more in total 911 charges than those state and local governments require customers of comparable non-VoIP services to pay. According to the plaintiffs in all of the cases stayed on primary jurisdiction grounds — and as asserted in other cases that trace to Mr. Schneider — state 911 laws require customers buying TDM services to pay one 911 charge per voice *channel*, but customers buying VoIP services to pay one 911 charge per *telephone number*. Because businesses typically obtain

many more telephone numbers than voice channels, a customer switching from a TDM service to a VoIP service with the same outbound calling capacity would, if this interpretation of the state laws were correct, see its monthly telephone bill increase substantially due to the additional 911 charges. But, in codifying the Commission's *VoIP 911 Order*, Congress specifically declared that a 911 "fee or charge" imposed by state or local governments for interconnected VoIP service "may not exceed the amount of any such fee or charge applicable to the same class of subscribers to telecommunications services." 47 U.S.C. § 615a-1(f)(1). Consistent with the normal meaning of these statutory terms and the federal policy of promoting broadband deployment and the switch to an all-IP network, the Commission should declare that the "amount" of the "fee or charge" in § 615a-1(f)(1) is the *total* dollar amount of 911 charges imposed on customers, not merely the rate per 911 charge. Therefore, state and local governments are preempted from requiring interconnected VoIP customers to pay more in total 911 charges than other customers subscribing to comparable telecommunications services.

BACKGROUND[2]

A. In the Alabama Action, Plaintiffs and BellSouth Disagree over the Scope of Services That Fall Within the Commission's Definition of Interconnected VoIP, 47 C.F.R. § 9.3

The 911 districts for Autauga County, Calhoun County, Mobile County, and the City of Birmingham in Alabama (the "Districts") have filed a lawsuit (the "Alabama Action")[3] against BellSouth for allegedly under-billing 911 charges to its business customers under Alabama's 911

[2] At the request of the Commission's staff, BellSouth and the Districts have prepared a joint Background section, which also appears in the petition for declaratory ruling submitted by the Districts. The rest of this petition sets forth BellSouth's positions.

[3] *Autauga Cty. Emergency Mgmt. Commc'n Dist. v. BellSouth Telecomms., LLC*, No. 2:15-cv-00765-SGC (N.D. Ala.). The Alabama Action was originally filed in Alabama state court and removed to federal court. *See* Dkt. 1, https://bit.ly/2wTz63r. Citations to "Dkt." are to the federal court docket.

statute, known as the Emergency Telephone Services Act ("ETSA").[4] The Districts allege that BellSouth failed to bill its customers all the 911 charges that the ETSA required and, therefore, failed to collect and remit all the 911 charges the ETSA required. *See*, *e.g.*, Am. Compl. ¶¶ 32, 36-37, 42, 48, 51, 57. The Districts have not alleged that BellSouth wrongfully retained any of the 911 charges that it collected. Rather, the Districts allege that BellSouth did not bill 911 charges on every "10-digit access number[]" provided to users of "VoIP or similar service," as the Districts contend was required by Alabama Code § 11-98-5.1(c). *Id.* ¶ 26. They further claim that BellSouth is liable to the Districts for the amount of 911 charges that BellSouth failed to bill, plus interest. *See*, *e.g.*, *id.* ¶¶ 32-33.

In their Amended Complaint, the Districts refer to the Commission's definition of interconnected VoIP and allege that "[m]uch of the Defendant's service in these districts qualifies as 'Interconnected VoIP Service' (and did so prior to October 1, 2013)." *Id.* ¶¶ 22-24. The Districts further allege that BellSouth "had a duty to bill, collect, and remit a 911 charge on every telephone number" for its "VoIP or similar service" (as the phrase is used in the ETSA). *Id.* ¶ 25.

The parties agree that, for local exchange access service, the ETSA required telephone companies to "collect one E911 charge for each voice pathway capable of local exchange service, subject to the statutory limit of 100 charges per person, per location." *Madison Cty.*

[4] In 2012, the Alabama legislature enacted a law that significantly amended the ETSA, effective October 1, 2013. *See* Ala. Laws Act 2012-293. The Alabama Action and the issues presented by this petition relate to 911 charges imposed before October 1, 2013, under the pre-amendment version of the statute. Amended Complaint ("Am. Compl.") ¶ 30 (Dkt. 19), https://bit.ly/2wTxGGP. Unless otherwise noted, all citations to the ETSA are to the version of the statute in effect through September 30, 2013, which was codified at Alabama Code §§ 11-98-1 to 11-98-15.

Commc'ns Dist. v. BellSouth Telecomms., Inc., 2009 WL 9087783, at *12 (N.D. Ala. Mar. 31, 2009).[5]

BellSouth has disputed the Districts' claims. BellSouth maintains that its only VoIP offering in Alabama during the relevant time period (before October 1, 2013) was its residential VoIP offering, U-verse, which it properly classified and billed as VoIP under the ETSA.[6] BellSouth maintains further that it offered no business VoIP products during the relevant time period; rather, it offered to business customers only TDM and other traditional telephone services, including ISDN PRI.

The Districts disavow BellSouth's factual contentions concerning the nature and characteristics of its business voice service for several reasons. The Districts believe that BellSouth was, in fact, providing business VoIP or similar service during the relevant time period. The Districts requested specific information about the specifications and configurations of BellSouth's voice service delivered to business customers and contend that BellSouth has not yet produced the requested documents that relate to BellSouth's factual assertions concerning its voice service products.

[5] The Districts acknowledge that the statutory limit of 100 charges per person, per location also applies to "VoIP or similar service."

[6] The Districts' allegations concern BellSouth's "business telephone service" that purportedly qualifies as VoIP, not BellSouth's residential VoIP service. Am. Compl. ¶ 3. BellSouth further maintains that the phrase "VoIP or similar service" in the ETSA "must be read in light of the FCC's definition of interconnected VoIP." Primary Jurisdiction Referral Order at 10-11 (Dkt. 52), https://bit.ly/2M72itn. BellSouth also maintains that, during the relevant period, it did not offer any business products in Alabama that were "similar" to VoIP. *See Madison Cty.*, 2009 WL 9087783, at *8 n.43 ("agree[ing] with BellSouth that . . . channelized service is not a similar technology to VoIP" because "channelized services . . . are circuit-switched technologies, [while] VoIP is a packet-switched technology").

B. BellSouth and the Districts Also Disagree as to Whether Alabama's ETSA Conflicts with the Communications Act, 47 U.S.C. § 615a-1(f)(1)

The Districts and BellSouth also dispute the meaning and preemptive scope of 47 U.S.C. § 615a-1(f)(1), which, among other things, affirms the authority of state and local governments to impose 911 charges on subscribers of "IP-enabled voice services,"[7] and states that, "[f]or each class of subscribers to IP-enabled voice services, the fee or charge may not exceed the amount of any such fee or charge applicable to the same class of subscribers to telecommunications services." 47 U.S.C. § 615a-1(f)(1). In addition, the Districts and BellSouth also disagree about whether the District Court or the Commission is the appropriate forum for the resolution of these disputes. The parties address their respective positions on these disputes in their petitions.

C. The Issues Referred to the Commission

Following discovery responses and correspondence that clarified the nature of the parties' disputes, BellSouth moved for a primary jurisdiction referral to the Commission. The district court granted the motion, referred the case to the Commission for further guidance, and stayed the case. Primary Jurisdiction Referral Order at 14 (Dkt. 52). The court noted that the Districts contend that VoIP includes, among other things, "ISDN PRI services provisioned to a customer over fiber-optic facilities — if the customer also receives IP connectivity." *Id.* at 8. The court concluded that "[t]he FCC has the expertise to competently and consistently determine what constitutes VoIP service" and to "parse these technical terms of art." *Id.* at 9. The court reasoned that, even though this case involves an Alabama statute, "Congress has recognized the FCC's authority in this area by codifying 911 VoIP obligations and allowing the FCC to periodically modify the category of subject services." *Id.* at 9-10. The court held that "'VoIP or

[7] The Communications Act defines "IP-enabled voice service" to have "the meaning given the term 'interconnected VoIP service' by [47 C.F.R. § 9.3]." 47 U.S.C. § 615b(8).

other similar service' under the ETSA must be read in light of the FCC's definition of interconnected VoIP." *Id.* at 10-11. Thus, "interpreting the ETSA's classification of VoIP or similar services implicates federal law." *Id.* at 10.

The court also concluded that there was "a need for uniformity regarding classification of VoIP services" because "numerous federal and state laws as well as FCC rules regarding VoIP would be implicated if the Districts' contentions are correct." *Id.* at 11. The court took account of the Commission's "professed desire for uniformity in the field of VoIP regulation," citing the Commission's amicus brief in *Charter*. *Id.* at 12 (citing Br. of FCC as Amicus Curiae in Supp. of Plaintiffs-Appellees, *Charter Advanced Servs. (MN), LLC v. Lange*, No. 17-2290 (8th Cir. filed Oct. 27, 2017) ("*Charter* Commission Br."), https://bit.ly/2wo08jL).

Following the district court's referral, counsel for BellSouth and the Districts engaged in further discussions among each other and with the Commission's staff, which clarified the nature of the issues in dispute and the nature of the issues on which the Commission could provide guidance through a declaratory ruling. BellSouth and the Districts continue to dispute, as a factual matter, the nature of the services BellSouth provided in Alabama during the relevant time period. However, BellSouth and the Districts agree that these factual disputes will be for the district court (and/or a jury) to resolve following the Commission's resolution of this proceeding.

In light of these factual disputes and the district court's primary jurisdiction referral, as well as primary jurisdiction referral decisions in two other courts,[8] BellSouth and the Districts

[8] *See* Order Granting Stay, *State ex rel. Phone Recovery Servs., LLC v. Verizon Bus. Glob.*, Nos. 2016-CA-000062 *et al.* (Fla. Cir. Ct. Leon Cty. May 17, 2018); Order of Court, *Phone Recovery Servs., LLC v. Verizon Pa., Inc.*, No. GD-14-021671 (Pa. Ct. Comm. Pl. Allegheny Cty. Aug. 9, 2018). Counsel for BellSouth is also counsel for the AT&T defendants in those other cases. In addition, the founder of Phone Recovery Services, Roger Schneider, is a consultant to the Alabama plaintiffs, and counsel for Phone Recovery Services in both Florida and Pennsylvania has been representing the Districts in the proceedings before the Commission.

agreed upon several hypothetical factual scenarios for the delivery to a customer of both voice service and broadband Internet access service over the same last-mile facility.[9] These scenarios are depicted in diagrams contained in an Appendix to each petition.

Scenario 1 depicts a hypothetical customer that buys both a voice service and an Internet access service that are transmitted using TDM over the last-mile facility[10] connecting the telephone company's central office (the box on the left) and a customer premises. The TDM multiplexer (or "MUX") at the customer premises sends the voice service to a TDM private branch exchange ("PBX") and the Internet service to an IP router, which in turn send those services to analog phones and computers, respectively. Both the Districts and BellSouth agree that Scenario 1 depicts a voice service that is neither an interconnected nor a non-interconnected VoIP service.

Scenario 2 is the same in all respects as Scenario 1, except that the voice and Internet access services are sent over separate wavelengths on the same last-mile fiber-optic facility.[11] That fiber-optic facility terminates in a Wave Division Multiplexer that also has both TDM and IP capability. Both the Districts and BellSouth agree that Scenario 2 depicts voice service that is neither an interconnected nor a non-interconnected VoIP service.

[9] Because the customer in each scenario is purchasing Internet access service, BellSouth and the Districts recognize that the customer has the ability also to use that Internet access service in connection with an over-the-top VoIP service (whether interconnected or non-interconnected). The classification of such services is not at issue in the Alabama Action or in this referral.

[10] The red-blue striping on the last-mile facility is meant to symbolize TDM multiplexing.

[11] The solid blue and red lines on the last-mile facility are meant to symbolize the different wavelengths.

Scenarios 3a and 3b are also the same in all respects as Scenario 1, except that the voice and Internet access services are sent over the last-mile facility using Ethernet transmission.[12] The last-mile facility terminates in an Ethernet MUX. In Scenario 3a, the Ethernet MUX is on the carrier side of the network demarcation point. In Scenario 3b, the Ethernet MUX is on the customer side of the network demarcation point. BellSouth and the Districts disagree about the facts that are relevant in determining, as a matter of law, whether a piece of equipment, such as the Ethernet MUX in Scenarios 3a and 3b (or the equipment depicted in Scenarios 4a-b and 5a-c), is on the carrier's side or the customer's side of the network demarcation point. The parties' positions on this issue are articulated in their petitions. The Districts and BellSouth agree that both Scenario 3a and Scenario 3b depict a voice service that is neither an interconnected nor a non-interconnected VoIP service.

In Scenarios 4a and 4b, the customer purchases both a voice and an Internet access service that are transmitted in IP over the last-mile facility, which terminates in CPE that has IP capability. That equipment also converts the voice service to TDM for delivery to the customer's TDM PBX and delivers the Internet service to an IP router. In Scenario 4a, the IP Equipment that also performs the TDM conversion is on the carrier's side of the network demarcation point. In Scenario 4b, that IP Equipment is on the customer's side of the network demarcation point. The Districts and BellSouth agree that Scenario 4a depicts a voice service that is neither an interconnected nor a non-interconnected VoIP service and that Scenario 4b depicts an interconnected VoIP voice service.

[12] The blue and red checkerboard pattern on the last-mile facility in these diagrams and in each of the remaining diagrams is meant to symbolize the use of packets: Ethernet packets in Scenarios 3a and 3b; IP packets in Scenarios 4a, 4b, 5a, 5b, 5c, and 6.

Scenario 5a is similar to Scenario 4a, except that the customer has an IP PBX. Scenarios 5b and 5c are similar to Scenario 5a, except that the customer has an IP/TDM PBX that converts the IP packets for use with the customer's analog telephones. The difference between Scenarios 5b and 5c are the location of the equipment in which the last-mile facility terminates in relation to the network demarcation point: in Scenario 5b, that equipment is on the carrier's side of the network demarcation point; in Scenario 5c, that equipment is on the customer's side of that point. Both the Districts and BellSouth agree that Scenarios 5a, 5b, and 5c all depict an interconnected VoIP service.

Scenario 6 depicts a customer that purchases an Internet access service and uses it with a hosted or managed VoIP service that rides over the top of the Internet access service. Both the Districts and BellSouth agree that Scenario 6 depicts an interconnected VoIP service.

BellSouth and the Districts agree that guidance from the Commission on the applicability of the interconnected VoIP definition to each of these scenarios will ensure that the Commission's guidance is helpful to the district court regardless of the resolution of factual disputes regarding the nature of BellSouth's services.[13] Although BellSouth and the Districts are in agreement as to the proper classification of the voice services as depicted, they disagree about the legal criteria for identifying the location of the network demarcation point. In addition, the parties recognize that dozens of other telephone companies are defendants in the Florida and Pennsylvania actions. Those telephone companies — or other interested members of the public — may have different positions on the proper classification of the voice services depicted in the various scenarios.

[13] Counsel for BellSouth and the Districts also agree that such guidance will be helpful to the state courts in the Florida and Pennsylvania cases.

QUESTIONS PRESENTED

The Alabama federal court "referred" the case to the Commission "for further guidance." Primary Jurisdiction Referral Order at 14 (Dkt. 52). While the court did not specify a list of questions for the Commission to address, BellSouth contends that the referral in the Alabama Action, as well as the referrals in the Florida and Pennsylvania Actions, present the following issues for the Commission to resolve:

1. Can a voice service that is not transmitted in IP to a customer over a last-mile facility ever be classified as an interconnected VoIP service under 47 C.F.R. § 9.3 or a non-interconnected VoIP service?

2. Where a customer orders a non-VoIP voice service (such as ISDN PRI), can the provider's decision to transmit that service over the last-mile facility in IP cause that voice service to fall within the definition of interconnected VoIP in 47 C.F.R. § 9.3?

3. In the final sentence of 47 U.S.C. § 615a-1(f)(1), is the "amount" of the "fee or charge" the total dollar value of the 911 charges due from a customer (individual 911 charge multiplied by number of charges due), or instead the individual 911 charge?

BellSouth also understands that the Districts contend that a fourth question is presented:

4. Does 47 U.S.C. § 615a-1 preempt states and local governments from requiring non-interconnected VoIP service providers to bill, collect, and remit 911 charges?

BellSouth contends that the Alabama federal court already resolved this issue.[14] In addition, there is no allegation in the Alabama Action — or in the Florida or Pennsylvania Actions — that any defendant is providing a non-interconnected VoIP service. BellSouth will respond to the Districts' arguments on this question in its comments in response to the Districts' petition.

[14] *See* Primary Jurisdiction Referral Order at 10-11 (Dkt. 52) ("[T]he FCC has allowed states to impose 911 fees on services that constitute interconnected VoIP, as defined in 47 C.F.R. § 9.3. Congress has reduced that decision to law. Accordingly, 'VoIP or other similar service' under the [Alabama 911 law] must be read in light of the FCC's definition of interconnected VoIP." (citations omitted)).

ARGUMENT

I. THE COMMISSION SHOULD ISSUE DECLARATORY RULINGS RESOLVING DISPUTES ABOUT THE MEANING OF ITS VOIP DEFINITION

A. The Commission Should Declare That a Necessary Condition for Classifying a Voice Service as VoIP Is That It Is Transmitted in IP over the Last-Mile Facility to the End-User Customer

1. The Commission should declare that voice service that is not transmitted to or from the customer's premises over the last mile using Internet Protocol is not any kind of VoIP service. By definition, VoIP involves — at a minimum — voice communications being transmitted over Internet Protocol. That is inherent in the name "Voice over Internet Protocol." Simply put, when voice is not transmitted over Internet Protocol, it is not "Voice over Internet Protocol."

This Commission's orders have construed VoIP consistently with that common meaning. For example, the Commission has explained that, "[w]hen VoIP is used, a voice communication traverses at least a portion of its communications path in an IP packet format using IP technology and IP networks." *IP-in-the-Middle Order*[15] ¶ 3. The Commission accordingly has differentiated VoIP from traditional circuit-switched telephony. As the Commission has explained, "[u]nlike traditional circuit-switched telephony, which establishes a dedicated circuit between the parties to a voice transmission, VoIP relies on packet-switching, which divides the voice transmission into packets and sends them over the fastest available route." *Id.*; *see also IP-Enabled Services NPRM*[16] ¶ 8 (describing differences between IP networks and circuit-

[15] Order, *Petition for Declaratory Ruling That AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, 19 FCC Rcd 7457 (2004) ("*IP-in-the-Middle Order*").

[16] Notice of Proposed Rulemaking, *IP-Enabled Services*, 19 FCC Rcd 4863 (2004) ("*IP-Enabled Services NPRM*").

switched networks). The Commission recently described TDM as a traditional circuit-switched service and accordingly differentiated it from VoIP service. *See Charter* Commission Br. 2-3.

In addition, the initial reason why the Commission codified its definition of interconnected VoIP service was to identify the subset of "IP-enabled services" that would be subject to federal obligations to provide 911 access. *VoIP 911 Order*[17] ¶ 23. A voice service that is not transmitted to the customer using IP is not an "IP-enabled service" in *any* sense and, therefore, cannot be interconnected VoIP. For example, when BellSouth and other AT&T companies send TDM voice services and broadband Internet access service over the same last-mile fiber-optic facility, they use *TDM* to multiplex the two services for transmission together over that facility. The CPE in which the fiber-optic cable terminates is therefore a TDM multiplexer that has no IP capabilities. Instead, the multiplexer uses TDM to separate the Internet service's IP packets from the voice service, routing the former to IP-compatible CPE and the latter to traditional telephone CPE (such as a TDM PBX).[18] However, BellSouth's request that the Commission declare that voice communications that are not transmitted using IP over the last mile are *never* VoIP does not turn on the specific technology used by BellSouth or any of its affiliates.

---

[17] First Report and Order and Notice of Proposed Rulemaking, *IP-Enabled Services*, 20 FCC Rcd 10245 (2005) ("*VoIP 911 Order*"). The Commission subsequently applied a variety of other obligations to providers of interconnected VoIP services. *See Charter* Commission Br. 13-16 (citing examples).

[18] This is effectively what is depicted in Scenario 1. And BellSouth, during the period at issue in the Alabama Action (ending in September 2013), did not offer or provide *any* business voice service in Alabama that transmitted voice to the end-user customer in IP over the last mile. Today, the only such business service that BellSouth offers (including in Florida) is branded as AT&T Phone for Business. BellSouth classifies that service as a VoIP service. AT&T Corp. offered (and still offers) business voice services that transmit voice to the end-user customer in IP over the last mile through configurations depicted in Scenario 5a, 5b, 5c, and 6. AT&T Corp. classifies all of those services as VoIP services. Finally, Teleport did not, and does not, offer any business voice services that transmit voice to the end-user customer in IP over the last mile.

2. The Districts now appear to concede that this position is correct. That is, they accept that, in each of the depicted scenarios in which the voice service is not transmitted in IP over the last mile, the voice service is *not* VoIP.[19] But before the primary jurisdiction referrals, the Districts in the Alabama Action and Phone Recovery Services in the Florida and Pennsylvania Actions took a different position. For example, when told that BellSouth and the other AT&T companies classified every voice service they transmitted in IP over the last mile as VoIP — and never transmit voice services that they classify as non-VoIP in IP over the last mile — the Districts and Phone Recovery Services asserted that, so long as a voice service is transmitted over the same high-capacity facility (such as a fiber-optic cable) as Internet access service, that physical proximity makes the voice service VoIP. In other words, they effectively treated "Voice *over* Internet Protocol" as if it were "Voice *nearby* Internet Protocol." That was the idea at the heart of their repeated references to "converged" or "integrated" services[20]: when a non-IP voice service is transmitted over the same facility as an Internet access service, they contended that the voice service was "converged" or "integrated" in some way with the Internet access service and thereby transformed into a VoIP service, even though the voice service itself was not transmitted in IP.

Those arguments regarding "converged" or "integrated" services are the mirror image of arguments the Commission rejected in the *Cardinal Order*.[21] There, Cardinal claimed that, because it sold "two different services" — "interconnected VoIP and conventional analog

---

[19] These are Scenarios 1, 2, 3a, and 3b.

[20] *E.g.*, Primary Jurisdiction Opp. at 3 (Dkt. 41), https://bit.ly/2R979ld; Letter from Districts' counsel to BellSouth's counsel at 2 (Jan. 23, 2018) (Ex. 1); *see also* Letter from BellSouth's counsel to Districts' counsel (Dec. 18, 2017) (Ex. 2).

[21] Forfeiture Order, *Cardinal Broadband, LLC*, 27 FCC Rcd 7985 (Enf. Bur. 2012) ("*Cardinal Order*").

telephone" — and because its analog telephone service "does not require a broadband connection or Internet Protocol-compatible CPE," *neither* of its services qualified as interconnected VoIP. *Cardinal Order* ¶ 11. The Commission correctly rejected that argument, finding that the "ability of . . . customers to choose a non-VoIP offering is not relevant to the nature . . . of [Cardinal's] VoIP service." *Id.* The Commission should similarly reject the inverse claim that the purchase of a separate, IP-enabled service — such as Internet access —*is* relevant to determining whether a voice service such as PRI qualifies as VoIP.

In sum, to bind the Districts to their recent concession and resolve the disputes in the Florida and Pennsylvania Actions, the Commission should declare that a necessary condition for a voice service to qualify as VoIP (whether interconnected or non-interconnected VoIP) is that the service is transmitted in IP over the last-mile facility to the end-user customer.

B. The Commission Should Declare That a Provider's Unilateral Decision To Transmit a Service in IP over the Last-Mile Facility to the End-User Customer Does Not Transform a Voice Service into an Interconnected VoIP Service

As reflected in the attached scenarios, a provider that sells a TDM voice service, such as ISDN PRI, may for its own internal network and provisioning reasons transmit that voice service in IP over the last-mile facility to the building housing the end-user customer and then convert that service to TDM within the building so the customer receives the service it ordered. To be clear, none of the AT&T companies named as defendants in these suits — not BellSouth, AT&T Corp., or Teleport — does this. But AT&T is aware that some of the defendants in the Florida and Pennsylvania Actions use IP transmission in this manner when provisioning TDM services. The Districts currently take the position that whether the voice service provisioned to an end-user customer qualifies as interconnected VoIP depends on where the equipment that converts the IP packets to the TDM service the customer ordered is located in relation to the demarcation point.

That is why the Districts contend that Scenario 4a does not depict a VoIP service, even though it depicts a voice service that is transmitted in IP over the last-mile facility. In Scenario 4a, the "IP Equipment" that converts the IP packets to TDM is on the telephone company's side of the network demarcation point. In contrast, in Scenario 4b, the "IP Equipment" performing that conversion is on the customer's side of the network demarcation point, so the Districts contend that this scenario depicts a VoIP service.

AT&T sees things differently, though it arrives at the same conclusions as the Districts. AT&T understands Scenario 4a to depict a customer that has purchased a TDM voice service, such as ISDN PRI, that the telephone company selling that service has decided — for its own reasons — to send over the last-mile facility in IP. In AT&T's view, the voice service the customer ordered remains a non-VoIP service because that is what the customer ordered. The location of the "IP Equipment" relative to the demarcation point within the building does not matter. Similarly, AT&T understands Scenario 4b to depict a customer that has purchased an interconnected VoIP voice service, which the customer then converts to TDM for use with its legacy TDM PBX and telephones.[22] Here, too, AT&T's view is that the VoIP service the customer ordered would not become a TDM service if the demarcation point were to the right — rather than to the left — of the IP Equipment depicted in Scenario 4b.

For the reasons set out below, the Commission should declare that the Districts' newfound focus on the location of the demarcation point is wrong and that the characteristics of

[22] In AT&T's experience, a customer wishing to use VoIP service with legacy TDM telephones will almost always instead purchase service in the manner depicted in Scenario 5b, where the customer has a PBX that converts the VoIP service into TDM for use with the customer's legacy telephones.

the service the customer orders controls whether a service a provider transmits over the last mile in IP is — or is not — interconnected VoIP.

1. The Interconnected VoIP Definition Does Not Rely on the Demarcation Rules, Which Were Adopted at a Different Time and for a Different Purpose

The Commission codified its interconnected VoIP regulation in 2005 in the *VoIP 911 Order*, based on factors it first articulated the year before in the *Vonage Order*.[23] Neither order mentions the Commission's demarcation point regulations and orders for purposes of classifying a service as interconnected VoIP.[24] The Commission does refer to "customer premises equipment" in the definition of interconnected VoIP, as well as in the *Vonage Order* and the *VoIP 911 Order*, but the Communications Act defines that term broadly to include "equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications," without mentioning the demarcation point. 47 U.S.C. § 153(16). And, while the Commission in the *VoIP 911 Order* described the relevant "IP-compatible CPE" as "end-user equipment that processes, receives, or transmits IP packets," it did not suggest that it was necessary to determine the location of the network demarcation point to apply that prong of the definition. *VoIP 911 Order* ¶ 24 n.77.

The Commission's demarcation point rules were adopted years before the interconnected VoIP definition. They were never intended to be used to classify the kind of service a customer purchases. Instead, as the Commission explained in 2001, it retained its demarcation point rules

---

[23] Memorandum Opinion and Order, *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, 19 FCC Rcd 22404 (2004) ("*Vonage Order*").

[24] The *VoIP 911 Order* does conclude that "the demarcation point that the Commission established for wireless E911 cost allocation would be equally appropriate for VoIP," *VoIP 911 Order* ¶ 53 n.164, but that statement has nothing to do with determining whether a service qualifies as VoIP.

for telephone companies to "ensure the validity and effectiveness of [the] inside wiring rules," which are "intended to encourage builders to install quality inside wiring."[25] The cable demarcation point rules similarly exist to allow subscribers to "purchase the cable home wiring inside his or her premises up to the demarcation point."[26] The question whether a voice service is interconnected VoIP, non-interconnected VoIP, or no type of VoIP at all, is entirely unrelated to the need to ensure a customer's or builder's ability to purchase and install inside wiring. The Commission also has not modified its demarcation point rules for either telephone companies or cable companies since adopting the definition of interconnected VoIP, confirming the lack of relationship between the former rules and the latter definition.

Relying on the demarcation point rules would also prevent the uniform classification of services, because those rules allow for the point of demarcation to vary on a building-by-building basis. For example, for single-unit premises, the demarcation point for a telephone company can be within 12 inches of the protector, within 12 inches of where the telephone wire enters the premises (if there is no protector), or as close to those points as practicable given the particulars of an individual premises. *See* 47 C.F.R. § 68.105(c). In a multiunit premises, it is even more complex, as those buildings can have a single demarcation point for the entire building or one demarcation point for each of the units within the building, and that choice is made — depending on the age of the building and whether it has had any major additions or rearrangements of

[25] Report and Order, *2000 Biennial Regulatory Review of Part 68 of the Commission's Rules and Regulations*, 15 FCC Rcd 24944, ¶ 65 (2000). Those rules were initially adopted as a "compromise" to "allow CPE manufactured by anyone to be connected to the[ ] [telephone] networks," while ensuring that third-party equipment "meet[s] the technical criteria for preventing network harm." Notice of Proposed Rulemaking, *2000 Biennial Regulatory Review of Part 68 of the Commission's Rules and Regulations*, 15 FCC Rcd 10525, ¶ 5 (2000).

[26] Report and Order and Second Further Notice of Proposed Rulemaking, *Telecommunications Services Inside Wiring*, 13 FCC Rcd 3659, ¶ 11 (1997).

wiring — either by the telephone company, based on its reasonable and nondiscriminatory standard operating practices, or by the building owner. *See id.* § 68.105(d).[27]

Therefore, if the demarcation point were relevant to classifying a service as VoIP or non-VoIP, the exact same service sold and provisioned in the exact same way to two different customers could be classified differently, based on happenstance, such as the selection of the demarcation point by the owners of two different multiunit buildings. Nothing in the Commission's VoIP decisions or the definition of interconnected VoIP in § 9.3 suggests that the definition was meant to turn on such factors unrelated to the service the customer ordered. Yet that would be the effect of adopting the Districts' current position that the location of the network demarcation point is the reason the voice service depicted in Scenario 4a is not VoIP, but the voice service depicted in Scenario 4b is interconnected VoIP.

2. A TDM Voice Service Never "Requires" IP-Compatible CPE or a Broadband Connection

Treating the demarcation point as irrelevant to whether a service is classified as interconnected VoIP is also consistent with the text of § 9.3. Under the Commission's definition, an interconnected VoIP service is one that "[r]equires" both "Internet protocol-compatible customer premises equipment" and a "broadband connection from the user's location." 47 C.F.R. § 9.3.[28] The common meaning of "require" is "to demand as necessary or essential."

---

[27] The cable demarcation point rules similarly distinguish between single-unit and multiunit premises and allow for the location to vary from building to building. *See* 47 C.F.R. § 76.5(mm).

[28] "Broadband connection," as used in § 9.3, means broadband *Internet* connection. The Commission adopted this prong to exclude from the definition of interconnected VoIP those voice services transmitted in IP format over *dial-up Internet* connections. In the *Vonage Order*, the Commission noted that Vonage's service required "a broadband connection to the Internet" and "will not work with dial-up Internet access." *Vonage Order* ¶ 5 & n.12. The Commission then cited that passage of the *Vonage Order* when it defined interconnected VoIP. *See VoIP 911 Order* ¶ 24 & nn.76-78. A 2011 NPRM confirms this reading. There, the Commission sought

Webster's Third New International Dictionary 1929 (2002). A TDM voice service such as PRI never *requires* either IP-compatible CPE or a broadband connection, because neither is ever "necessary or essential" for the customer to receive the TDM voice service it ordered. A provider's choice to fulfill a customer's order for a TDM voice service such as PRI by *using* IP to transmit the voice service over the last-mile facility does not cause that PRI service to *require* either the IP-compatible CPE or broadband connection that is used only as a result of that provider's unilateral decision. And that is true regardless of the location of the demarcation point in relation to the placement of the equipment that converts the IP packets to TDM so that the customer receives the PRI service that it ordered.

The Commission's analysis in the *IP-in-the-Middle Order*, while pre-dating the interconnected VoIP definition and addressing different questions from those presented here, is instructive and supports AT&T's reading of § 9.3. There, the Commission considered a voice service where the "decision to use [IP] . . . [wa]s made internally by" the provider, rather than the customer that ordered the service. *IP-in-the-Middle Order* ¶ 12. There, as here, the "[e]nd-user customer[ ] do[es] not order a different service, pay different rates, or place and receive calls any differently": the provider is the one that elected to provision the TDM service the customer

---

"comment on whether [to] modify the second prong of the existing definition" because "[s]ome interconnected VoIP service providers have asserted that VoIP services . . . are capable of functioning over a dial-up connection." Notice of Proposed Rulemaking, Third Report and Order, and Second Further Notice of Proposed Rulemaking, *Amending the Definition of Interconnected VoIP Service in Section 9.3 of the Commission's Rules*, 26 FCC Rcd 10074, ¶ 49 (2011) ("*VoIP 911 NPRM (2011)*").

For these reasons, the Districts were wrong to claim that the "broadband connection" element of the interconnected VoIP definition is satisfied whenever a voice service is transmitted over a fiber-optic cable, because that cable is capable of carrying information at high, broadband speeds. *See* Letter from Districts' counsel to BellSouth's counsel at 4 (Apr. 12, 2017) ("[T]he connection between the customer's CPE and the telephone company is certainly broadband, as it travels at very high speed over fiber-optic cable.") (Ex. 3).

ordered using IP transmission. *Id.* Similarly, when a customer orders a PRI service and the provider elects to send that voice service over the last mile in IP, the end user "receive[s] no enhanced functionality" "due to the conversion to IP." *Id.* ¶¶ 15, 17. The location of the demarcation point also has no bearing on the functionality the customer ordering that PRI service receives or whether that service should be classified as VoIP.

3. Siding with the Districts Would Undermine Federal Communications Policy To Advance the Interests of a Tax Bounty Hunter

The Districts' position here derives from the efforts of Mr. Schneider, who, through his company Expert Discovery, LLC, serves as contingency-fee consultant for each of the Districts. As Mr. Schneider testified in another 911-charge action filed by these four Districts (and two others) against another telephone company, the Districts' legal views are his views, because they interpret the law "the way I told them to."[29]

Mr. Schneider also founded Phone Recovery Services,[30] which is the plaintiff in the Florida and Pennsylvania Actions, as well as at least six other *qui tam* actions. Mr. Schneider has also convinced local governments in addition to the Districts to hire him or one of his companies on a contingency-fee basis to initiate "audits" of 911-charge billing and to partner with contingency-fee counsel to bring lawsuits against telephone companies. These arrangements, like the *qui tam* actions, entitle Mr. Schneider to a percentage of any funds recovered.[31] In addition to the reasons set out above, the Commission should reject Mr.

---

[29] Excerpt of Deposition Transcript of Roger Schneider at 108:11-16 (Sept. 25, 2017), *Madison Cty. Commc'ns Dist. v. ITC Deltacom, Inc.*, No. 2014-904855 (Ala. Cir. Ct. Jefferson Cty.) (Ex. 4).

[30] *See id.* at 42:2-44:7, 72:3-11.

[31] For example, Plaintiff Birmingham Emergency Communications District entered into an agreement with Expert Discovery in which Expert Discovery and the law firm of Badham & Buck would share 40 percent of any money recovered from telephone companies. *See*

Schneider's interpretation of the Commission's definition of interconnected VoIP service, which is driven not by any rational conception of telecommunications policy but instead by his desire as a 911 tax bounty hunter to divert 911 charges to his own use.

Finally, the Districts' proposed expansion of the Commission's definition of interconnected VoIP is especially problematic because that definition is also used in multiple federal statutes,[32] numerous other Commission rules,[33] and many state statutes.[34] The Commission has recognized that its definition of interconnected VoIP has proliferated in a variety of contexts and that there is a need to handle potential adjustments to that definition with care. Thus, when the Commission issued a notice of proposed rulemaking regarding potential amendments to the interconnected VoIP definition, it also sought comment on whether such amendments should apply *only* for 911 purposes. *See VoIP 911 NPRM (2011)* ¶¶ 100-101. The rulemaking process allows the Commission to act prospectively to fine-tune the applicability of any changes to its regulation defining interconnected VoIP service. But if the Commission were to adopt the Districts' interpretation of the definition of interconnected VoIP service in 47 C.F.R. § 9.3 in this declaratory ruling proceeding, that interpretation would carry through to all the federal and state regulatory regimes that incorporate that definition.

Professional Services Contract, Birmingham Emergency Communications District and Expert Discovery, LLC § 6 (Dec. 3, 2013) (Ex. 5).

[32] *See*, *e.g.*, 47 U.S.C. §§ 153(25), 227(e)(8)(C), 615c(g).

[33] *See*, *e.g.*, 47 C.F.R. §§ 4.3(h), 6.3, 14.10, 54.5, 63.60, 64.601, 64.1600, 64.2002.

[34] *See*, *e.g.*, Cal. Pub. Util. Code § 285(a); D.C. Code § 34-1803(a)(1)(C); Ind. Code § 24-5-14.5-4; Kan. Stat. Ann. § 66-2008(a); N.C. Gen. Stat. § 143B-1400(18).

II. SECTION 615a-1(f)(1) PREEMPTS STATE STATUTES INSOFAR AS THEY REQUIRE INTERCONNECTED VOIP CUSTOMERS TO PAY A HIGHER TOTAL AMOUNT IN 911 CHARGES THAN CUSTOMERS OF SIMILAR TELECOMMUNICATIONS SERVICES

In 2008, when Congress codified the Commission's *VoIP 911 Order*, it added an express preemption provision: "the [911] fee or charge [to subscribers to interconnected VoIP services] may not exceed the amount of any such fee or charge applicable to the same class of subscribers to telecommunications services." 47 U.S.C. § 615a-1(f)(1). In doing so, Congress sought not merely to prevent states from adopting VoIP-specific 911 charges that are higher than the 911 charges for non-VoIP customers,[35] but also to prevent states from discouraging the adoption of VoIP services by imposing greater 911 charges *in total* on VoIP customers than on subscribers to similar non-VoIP telephone services. That is the best reading of the text and is consistent with the federal policy of encouraging the development of VoIP and other IP-enabled services.

The Districts contend that, under the Alabama 911 law in effect through September 30, 2013, a customer purchasing an ISDN PRI service that was actually VoIP (on the Districts' erroneous theory) would have to pay one 911 charge per telephone number, while customers purchasing a service that the Districts concede is ISDN PRI would have to pay only one 911 charge per voice-capable channel.[36] Phone Recovery Services has similarly claimed in the Florida and Pennsylvania Actions that those states, too, required VoIP customers, but only VoIP customers, to pay one 911 charge for every assigned telephone number.

---

[35] For example, § 615a-1(f)(1) clearly preempts a state from requiring a residential customer with a single line from paying a $2.00 911 charge when that customer switches to VoIP service, if that customer was paying a $1.50 911 charge for her non-VoIP service.

[36] *See* Am. Compl. ¶ 25 (alleging that, for VoIP or similar services, "the provider had a duty to bill, collect, and remit a 911 charge on every telephone number"); *Madison Cty.*, 2009 WL 9087783, at *12 (holding that, for non-VoIP services, Alabama statute required telephone companies to "collect one E911 charge for each voice pathway capable of local exchange service, subject to the statutory limit of 100 charges per person, per location").

Because businesses often obtain many more telephone numbers than capacity to make and receive external voice calls, the Districts' and Phone Recovery Services' theory could cause two customers that bought the same amount of calling capacity and each obtained 100 telephone numbers to owe vastly different amounts in 911 charges. For example, during the relevant time period in Alabama, the customer buying VoIP would have owed 100 911 charges, or $508.00 at the then-effective $5.08 rate per charge, while the second customer buying a PRI would have owed no more than 23 charges, or a maximum of $116.84.

The Commission should declare that § 615a-1(f)(1) preempts any state statute that requires interconnected VoIP customers to pay a higher total amount in 911 charges than customers purchasing the same quantity of non-VoIP telephone service.

First, that conclusion follows from the text of § 615a-1(f)(1), which states: "For each class of subscribers to IP-enabled voice services,[37] the fee or charge may not exceed the amount of any such fee or charge applicable to the same class of subscribers to telecommunications services." The "amount of any such fee or charge" that is "applicable" to a "class of subscribers" is reasonably read to include not only the rate that is used to calculate the total amount due from a customer, but also the total amount itself.[38] The Districts' contrary reading — that § 615a-1(f)(1) governs only the rate, not the total — would enable a state or local government easily to evade Congress's prohibition by establishing a nominally identical rate, but requiring VoIP customers to pay twice as many 911 charges for the same amount of service as a non-VoIP customer. That would violate "a cardinal principle of statutory construction that a statute ought,

[37] "IP-enabled voice service" is defined to mean "interconnected VoIP service" as defined by 47 C.F.R. § 9.3. *See* 47 U.S.C. § 615b(8).

[38] *See, e.g.*, *Webster's Third New International Dictionary* 72 (first definition of "amount" when used as noun: "the total number or quantity: AGGREGATE").

upon the whole, to be construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001).[39]

Second, reading § 615a-1(f)(1) to prohibit charging VoIP customers both a higher rate and a higher total amount than non-VoIP customers advances the federal policy of "encourag[ing] the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans." 47 U.S.C. § 1302(a). The Commission has long "recognized the paramount importance of encouraging deployment of broadband infrastructure to the American people," and the role of VoIP in "encourag[ing] consumers to demand more broadband connections, which will foster the development of more IP-enabled services." *IP-Enabled Services NPRM* ¶¶ 3, 5 (footnote omitted).[40] More recently, the Commission has discussed the need to "accelerate the transition to next generation IP-based networks."[41] Allowing state and local governments to require customers to pay more in 911

[39] In the past, the Districts have pointed to what they claim is legislative history to support their reading of the text of § 615a-1(f)(1). *See* Pl.'s Opp. to Defs.' Mot. for J. on the Pleadings at 15, *Birmingham Emergency Commc'ns Dist. v. TW Telecom Holdings Inc.*, No. 2:15-cv-00245 (N.D. Ala. filed July 13, 2018) (Dkt. 57), https://bit.ly/2SJmqG9. But what the Districts cited is not the view of any member of Congress, but is instead part of the Congressional Budget Office's cost estimate for the draft House bill. *See* H.R. Rep. No. 110-442, at 9-12 (2007). Moreover, the cost estimate merely notes that it was "possible" that some local governments would violate the statute by imposing higher "rates" on 911 charges for VoIP customers, not that this was the only way a local government could violate the statute.

[40] *See also* First Report and Order and Notice of Proposed Rulemaking, *IP-Enabled Services*, 20 FCC Rcd 10245, ¶ 31 (2005) ("recogniz[ing] the nexus between VoIP services and accomplishing the goals of section 706").

[41] Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, 32 FCC Rcd 3266, ¶ 72 (2017); *see also* Report and Order, *Numbering Policies for Modern Communications*, 30 FCC Rcd 6839, ¶ 13 (2015) (noting "the Commission's goal to facilitate the transition to all-IP networking and promote interconnection of IP-based voice networks").

charges when they switch to interconnected VoIP services would undermine that federal policy by discouraging customers from doing so.

For the reasons articulated above, BellSouth's interpretation of 47 U.S.C. § 615a-1(f)(1) is the only reasonable one. But even if the Commission were to conclude that the Districts' interpretation was also a reasonable reading of the statute's text, that would mean merely that the statute contains an ambiguity for the Commission to resolve. The Commission should do so by adopting BellSouth's reading, which is the only one that advances the federal policy of encouraging migration to VoIP and other IP-based services. When reviewing the Commission's interpretations of provisions of the Communications Act administered by the Commission, courts grant *Chevron* deference and hold the Commission's interpretation "lawful" so long as it is "reasonable."[42] BellSouth's interpretation is certainly reasonable (in fact, it is the most reasonable interpretation of the text) and consistent with federal policy.

CONCLUSION

The Commission should declare that voice service that does not utilize Internet Protocol to transmit voice communications over the last-mile facility to or from the end-user customer's premises is never VoIP service, including interconnected VoIP service under 47 C.F.R. § 9.3. The Commission should also declare that the location of the network demarcation in a particular building is not relevant to classifying a service as interconnected VoIP. Finally, the Commission should declare that the last sentence of 47 U.S.C. § 615a-1(f)(1) prohibits state and local governments from imposing higher 911 charges on interconnected VoIP service than on similar

[42] *See Glob. Crossing Telecomms., Inc. v. Metrophones Telecomms., Inc.*, 550 U.S. 45, 55 (2007) (citing *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843-44 (1984)). Congress clearly has given the Commission authority to administer 47 U.S.C. § 615a-1 by providing that its scope of application to IP-enabled voice services "may be modified by the Commission from time to time." 47 U.S.C. § 615a-1(a).

non-VoIP service, whether that is accomplished by imposing a higher number of charges or a higher rate per charge.

Respectfully submitted,

/s/ *Scott H. Angstreich*

Scott H. Angstreich
Jeremy S. B. Newman
Kellogg, Hansen, Todd, Figel
& Frederick, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Christopher Heimann
Gary L. Phillips
David L. Lawson
AT&T Services, Inc.
1120 20th Street, N.W.
Washington, D.C. 20036
(202) 457-3058

Attorneys for BellSouth Telecommunications, LLC

January 7, 2019